



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,212	09/26/2003	Maurice Smith	34171	2888
23589	7590	04/14/2008		
HOVEY WILLIAMS LLP			EXAMINER	
10801 Mastin Blvd., Suite 1000			MEYERS, MATTHEW S	
Overland Park, KS 66210			ART UNIT	PAPER NUMBER
			3689	
			MAIL DATE	DELIVERY MODE
			04/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/672,212

**Applicant(s)**

SMITH ET AL.

**Examiner**

MATTHEW S. MEYERS

**Art Unit**

3689

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is in response to applicant's communication on 1/11/08, wherein claims 1-4 and 6-7 are currently pending. Additionally, claim 5 has been cancelled.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyatt US 6490530.



2. With respect to claim 1, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of:

- a. deploying a plurality of remote sensing units and a control unit adapted to automatically identify the substance and to provide a corresponding report

(detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 -44);

b. uploading the report to a remote server via a system chosen from the group consisting of a cell phone network and a satellite phone network (detector stations capable of measuring and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a central control station, col. 8 lines 29-45 and col. 3, lines 36-52, "communications/telemetry module");

*American Heritage Dictionary - Cite This Source - Share This*

**te·lem·e·try**   (tə-lēm'f-trē) [Pronunciation Key](#)

n. The science and technology of automatic measurement and transmission of data by wire, radio, or other means from remote sources, as from space vehicles, to receiving stations for recording and analysis.

c. establishing a hierarchy of threat response and evaluation authorities, wherein the evaluation authorities include , including a plurality of experts having knowledge relevant to making a high-level threat assessment (interpreted to be the sending of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 - col. 14 line 3) (Examiner notes that these agencies are response and evaluation authorities.); and

d. allowing the hierarchy of threat response and evaluation authorities to access the report on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and

surrounding the monitored region through telemetry means, col. 13 line 65 - col. 14 line 3) (Examiner notes that these agencies are response and evaluation authorities.).

- e. Wyatt discloses all the above limitations, but does not explicitly disclosed wherein the step of uploading is to a secure remote server. However, it would have been obvious to one of ordinary skill or creativity at the time of the invention to have used a secure socket or other form of encryption to have securing uploaded the data to a remote server. This step would have been well within the ordinary skill level of one uploading data to a central station via a communication/telemetry module (Wyatt col. 13, lines 36-52).
3. With respect to claim 2, Wyatt discloses a method of evaluating a threat posed by a substance, further including the steps of providing the remote server with evaluation tools for automatically evaluating, the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 - 43, 51 - 54 and 60 - 63).
4. With respect to claim 3, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of:
- f. deploying a plurality of remote sensing units and a control unit adapted to automatically detect and identify the substance and to provide a corresponding report, wherein the substance is chosen from the group consisting of a solid, a

liquid, and a gas(detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 -44);

*WordNet - Give This Source - State This*  
**aerosolized**

*adjective*

in the form of ultramicroscopic solid or liquid particles dispersed or suspended in air or gas

- g. uploading the report to a remote server (detector stations capable of measuring and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a central control station, col. 8 lines 29 - 45);
- h. determining an actual geographic location of a remote sensing unit detecting the substance using the remote sensing unit, communicating the actual geographic location to the control unit, and identifying an appropriate local reporting authority and an appropriate local reporting policy based upon the actual geographic location of the remote sensing unit detecting the substance (interpreted to be inherently disclosed as the reference teaches the reporting of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65- col. 14 line 3) (Examiner notes this may be done using triangulation since Wyatt transmits data via its

communication/telemetry module;

*The American Heritage Science Dictionary - Cite This Source - Share This*

**triangulation**  (trī-āng'gyo-lā'shan) [Pronunciation Key](#)

A method of determining the relative positions of points in space by measuring the distances, and sometimes angles, between those points and other reference points whose positions are known. Triangulation often involves the use of **trigonometry**. It is commonly used in the navigation of aircraft and boats, and is the method used in the **Global Positioning System**, in which the reference points are satellites.

- i. notifying the appropriate local reporting authority of the report in accord with the appropriate local reporting policy (threat analyses are sent to various civil, police and' emergency agencies, col. 13 lines 65 - col. 14 line 3);
- j. establishing a hierarchy of threat evaluators, including a plurality of experts having knowledge relevant to making a high-level threat assessment (interpreted to be the sending of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 - col. 14 line 3);
- k. allowing the hierarchy of threat evaluators to access the report on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 - col. 14 line 3).
- l. Wyatt discloses all the above limitation, but does not explicitly disclose wherein the determining step is provided by a GPS device located on the remote sensing unit, communicating the actual geographic location to the control unit.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added a global positioning system to the remote sensor in order to have a secondary confirmation on where the sensor is located. Wyatt already places sensor station which have the capability of satellite communication which inherently would allow them to be located using triangulation, which Wyatt does not explicitly disclose. However, Wyatt is able to ascertain where its stations are when communicating with the central station in order to estimate the threat characteristics of the data it collects (Wyatt col. 13 line 65 - col. 14 line 3). Nevertheless, it would have been obvious to one of ordinary skill and creativity at the time of the invention to have included a separate GPS system to the remote sensors.

5. With respect to claim 4, Wyatt discloses a method of evaluating a threat posed by a substance, further including the steps of providing the remote server with evaluation tools for automatically evaluating the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 - 43, 51 - 54 and 60 - 63).
6. With respect to claim 5, Cancelled.
7. With respect to claim 6, Wyatt discloses The method as set forth in claim 1, wherein the response authorities are chosen from the group consisting of local first responders, state agencies, state departments, regional agencies, regional departments, national departments, and national agencies (interpreted to be the access



Art Unit: 3689

of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 - col. 14 line 3).

8. With respect to claim 7, Wyatt discloses The method as set forth in claim 1, wherein the evaluation authorities include experts on subjects chosen from the group consisting of medical issues relating to exposure to chemical substances, medical issues relating to exposure to biological substances, medical issues relating to exposure to radioactive substances, law, law enforcement, policy, doctrinal issues, historical cases, modeling, and simulation(interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 - col. 14 line 3).

9. **Claims 3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyatt in view of 42 USC 11023 (a) (enacted October 17, 1986).

10. With respect to claim 3, Wyatt discloses a method of evaluating a threat posed by substance (reference provides an aerosol hazard classification and early warning network, see abstract), the method comprising the steps of: deploying a plurality of remote sensing units and a control unit adapted to substantially automatically identify the substance and to provide a corresponding report (detector stations capable of measuring and classifying aerosol particles, col. 8 lines 34 - 44); uploading the report to a remote server (detector stations capable of measuring and classifying aerosol particles, and reporting all processed data via integrated telecommunications to a

central control station, col. 8 lines 29 - 45); establishing a hierarchy of threat evaluators, including a plurality of experts having knowledge relevant to making a high-level threat assessment (interpreted to be the sending of threat analyses to various civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region, col. 13 line 65 - col. 14 line 3); and allowing the hierarchy of threat evaluators to access the report on the remote server via a wide area network (interpreted to be the access of various respective threat analyses by civil, police, emergency and other agencies responsible for population health and safety throughout and surrounding the monitored region through telemetry means, col. 13 line 65 - col. 14 line 3).

11. In the event that Wyatt may be determined not to disclose the remaining limitations of claim 3, 42 USC 11023(a) teaches the remaining limitations of claim 3.

12. 42 USC 11023 (a) requires that the operator of a facility subject to the requirements of the section complete and submit a toxic chemical release form to the EPA Administrator and to an official or officials of the State designated by the Governor of the respective state. 42 USC 11023 (a) is therefore interpreted to provide a method of identifying an appropriate local reporting authority (the State in which the toxic chemical was released) and an appropriate local reporting policy based upon an actual geographic location of the substance (the Governor of the State in which the toxic chemical was released designates official(s) for the report to be submitted to, i.e. a local reporting policy). 42 USC 11023 (a) is also interpreted to provide a method for notifying the appropriate local reporting authority of the report in accordance with appropriate

local reporting policy (a report must be submitted to an officials designated by the Governor of the State).Thus, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the method of Wyatt with local reporting and associated policies based on geographic locations required by 42 USC 11023(a)in order to provide a more efficient and useful method of evaluating a threat posed by a substance.

13. With respect to claim 4, Wyatt discloses a method of evaluating a threat posed by a substance, further including the steps of providing the one or more data processing and storage servers with evaluation tools for substantially automatically evaluating the report in light of other relevant data (interpreted to be the evaluation of the threat posed by and likely movement of the aerosol cloud by the central station, integrated with meteorological data, col. 13 lines 41 -43, 51 - 54 and 60 - 63).

### ***Response to Arguments***

4. Applicant's arguments filed 1/11/08 have been fully considered but they are not persuasive. Applicant's arguments have been addressed above within the Office Action.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Dungan US 6252510 provides a method of monitoring the presence of toxic gases in the atmosphere and notification of conditions to a central reporting facility.
  - b. Missouri Dept. of Natural Resources Toxic Release Inventory website is provided as an exemplar of a local reporting policy as required by 42 USC 11023(a).
  - c. "What is the Toxics Release Inventory (TRI) Program" is provided as an overview of the Emergency Planning and Community Right-to-Know Act, which includes 42 USC 11023(a) as one part.
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW S. MEYERS whose telephone number is (571)272-7943. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew S. Meyers/  
Examiner, Art Unit 3689

/Janice A. Mooneyham/  
Supervisory Patent Examiner, Art Unit 3689